

**IN THE HIGH COURT OF MANIPUR
AT IMPHAL**

WA No. 10 of 2023

Laiphrakpam Tombi Singh, aged about 71 years, S/o
(L) Laiphrakpam Sura Singh, resident of Kha-
Naorem Leikai, P.O. Canchipur, PS. Singjamei, and
District Imphal West, Manipur-795003.

..APPELLANT

IN WRIT APPEAL

-Versus-

1. The State of Manipur, represented by the
Commissioner/Secretary, Hr. and Tech. Education,
Govt. of Manipur, Old Secretariat Building,
Babupara, P.O. & P.S. Imphal, District Imphal West
District,
Manipur-795001.
2. The Chancellor, Manipur Technical University,
Governor's Secretariat, raj Bhawan, Imphal,
Manipur-795001.
3. Manipur Technical University, represented by its
Registrar, Government Polytechnic Campus,
Takyelpat, P.O. & P.S. Imphal, District Imphal West,
Manipur-795004.
4. Shri H. Gyan Prakash, IAS, Commissioner, Higher
& Technical Education, Government of Manipur,
Old Secretariat Building, Imphal, Manipur-795001.

.....RESPONDENTS

IN WRIT APPEAL

For the appellant	::	Mr. BP Sahu, Sr. Adv.
For the Respondents	::	Mr. M. Devananda, Addl. AG Mr. T. Tomo, Advocate for the MTU
Date of Hearing and reserving Judgment & Order	::	07.02.2023
Date of Judgment & Order	::	14.02.2023

(CAV)

(M.V. Muralidaran, Acting CJ)

This writ appeal is directed against the order dated 1.2.2023 passed by the learned Single Judge in W.P.No.83 of 2023, whereby the learned Single Judge directed the writ petition to be listed on 13.2.2023 to consider the maintainability of the same.

2. Heard Mr.B.P.Sahu, learned senior counsel for the appellant; Mr. M. Devananda, learned Additional Advocate General for the respondents 1 and 4 and Mr. Momo Singh, learned counsel for the respondents 2 and 3.

3. Assailing the impugned order of the learned Single Judge, Mr.B.P.Sahu, learned senior counsel, submitted that the appellant, who was serving as the first regular Vice-Chancellor of the newly established Manipur Technical University, retired

on attaining the age of superannuation in the month of October, 2020 and after his retirement, no Vice-Chancellor was appointed and the said post was illegally held by the then Commissioner, Higher Education till the appointment of the appellant on 17.8.2021 as a stop-gap arrangement for a period till a regular Vice Chancellor is appointed.

4. The learned counsel would submit that after the appointment of the appellant as stop-gap arrangement, the power and functions of the Vice Chancellor has been illegally curtailed by the Deputy Secretary, Higher and Technical Education addressing a letter dated 3.9.2021 to the Registrar, Manipur Technical University. Aggrieved over the said letter, the appellant has filed W.P.(C) No.602 2021 before this Court. By the order dated 5.10.2021, the said writ petition was allowed and the appellant was directed to function as Vice Chancellor till the regular Vice Chancellor is appointed.

5. The learned senior counsel further submitted that after the appointment of one Dr.Bhabeswar Tongbram as regular Vice-Chancellor, the appellant was ceased to function as Vice Chancellor. However, the appointment of Dr. Bhabeswar Tongbram was challenged by several persons by filing writ petitions and, this Court, by the order dated 27.1.2023,

quashed the appointment of Dr.Bhabeswar Tongbram and further directed to initiate steps to appoint Vice Chancellor afresh and to make a stop gap arrangement in accordance with law till a regular Vice Chancellor is appointed. Pursuant to the direction of this Court, on the same date i.e. on 27.1.2023, one H.Gyan Prakash, IAS, Commissioner, Higher and Technical Education, Government of Manipur was appointed as Vice Chancellor as stop-gap arrangement for a period till a regular Vice Chancellor is appointed. Aggrieved by the appointment of H.Gyan Prakash, IAS, Commissioner, Higher and Technical Education, Government of Manipur, the appellant has filed W.P.(C) No.83 of 2023 to set aside the order dated 27.1.2023 and to allow the appellant to function and impart his duties as Vice Chancellor till a regular Vice Chancellor is appointed in the light of the order dated 17.8.2021 passed by the Government and the order dated 5.10.2021 passed in the writ petition.

6. The learned senior counsel for the appellant urged that a Commissioner cannot be appointed as a Vice Chancellor on stop-gap basis, as he does not possess the required eligibility criteria even for a day and the same is liable to be quashed. When that being the position, while ordering notice in the writ petition, the learned Single Judge erred in ordering the

writ petition to be listed on maintainability, thereby allowing the fourth respondent to continue to function as in-charge Vice Chancellor. In fact, the learned Single Judge failed to consider the law that even if the post of Vice Chancellor is entrusted for a limited period of time as interim or temporary arrangement, one cannot ignore the eligibility criteria for the reason that even if a person is holding the charge of Vice Chancellor just for a day, he will be a Vice Chancellor who need to take decisions based on his qualification and, such person, who is not eligible, cannot be appointed to the post of Vice Chancellor.

7. The learned senior counsel next submitted that the learned Single Judge erred in law by not granting interim order of stay thereby restraining the fourth respondent from functioning as Vice Chancellor. He would submit that when a Co-ordinate Bench of this Court in W.P.(C) No.602 of 2021 observed that the appellant is entitled to hold the post of Vice Chancellor, the learned Single Judge, in the impugned order, ought not to have questioned the maintainability of W.P.(C) No.83 of 2023 and, in such view of the matter, the order of the learned Single Judge, which is impugned in this writ appeal, is liable to be set aside.

8. On the other hand, the learned counsel appearing for the respondents 2 and 3 submitted that pursuant to the order of this Court dated 27.1.2023 passed in W.P.(C) Nos.805, 807, 825 and 791 of 2021, the Chancellor of Manipur Technical University appointed the fourth respondent herein as Vice Chancellor of Manipur Technical University as stop-gap arrangement and the appellant cannot blame the respondents 2 and 3 regarding the said appointment made.

9. The learned counsel for the respondents 2 and 3 further submitted that as against the adjudication dated 1.2.2023 recorded by the learned Single Judge, no writ appeal will lie and, on the sole ground, the writ appeal is liable for dismissal.

10. The learned Additional Advocate General appearing for the respondent State also questioned the maintainability of the writ appeal preferred against the order of the learned Single Judge dated 1.2.2023. He would submit that since no adverse order has been passed in the writ petition by the learned Single Judge, the present writ appeal is liable to be dismissed at the admission stage itself.

11. We have considered the rival submissions and also perused the materials available on record.

12. The appellant has filed the writ appeal against the order dated 1.2.2023 passed by the learned Single Judge in W.P.(C) No.83 of 2023. The order of the learned Single Judge dated 1.2.2023 reads thus:

“Heard Mr.B.P.Sahu, learned senior counsel assisted by Mr.D.P.Sahu, learned counsel appearing for the petitioner.

Issue notice returnable within one week.

Mr.M.Devananda, learned Addl. AG assisted by Ms.Jyotsana, learned ocunsel accepts notice on behalf of the respondent No.1 and Mr.Tayenjam Momo, learned counsel accepts notice on behalf of the respondents No.2 & 3, hence, no formal notice is called for in respect of the said respondents.

Petitioner is to take steps for service of notice upon the respondent No.4 by speed post within one week.

List this case again on 13th February, 2023 to consider the maintainability of the present writ petition.

Registry is directed to reflect the name of Mr.M.Devananda, learned Addl. AG and Mr.Tayenjam Momo, learned counsel for the respondents in the cause list.”

13. The present appeal has been filed by the appellant mainly on the issue of maintainability of the writ petition recorded by the learned Single Judge and also non-consideration of interim stay of the impugned order dated 27.1.2023.

14. Admittedly, the order of the learned Single Judge is not appealable for the reason that an adjudication has been recorded by the learned Single Judge while issuing notice to the private respondent and recording appearance of the official respondents. Prima facie, an appeal will not lie against the order of the learned Single Judge in the form of adjudication recorded in his order regarding maintainability of the writ petition. A Writ Court has right to question the maintainability of the writ petition and it is the duty of the writ petitioner to convince the learned Single Judge qua the maintainability of the writ petition.

15. May be, on a reading of the averments set out in the affidavit filed in support of the writ petition, the learned

Single Judge has raised the maintainability issue, as the very same appellant earlier filed W.P.(C) No.602 of 2021, wherein this Court while quashing the letter dated 3.9.2021 impugned, allowed the appellant to function as Vice Chancellor as per the Manipur Technical University Act and the Rules framed thereunder till a regular Vice Chancellor is appointed. Thus, from the above order, it is clear that the function of the appellant as Vice Chancellor of Manipur Technical University is a stop-gap arrangement only.

16. As could be seen from the records, one Dr.Bhabeswar Tongbram has been appointed as Vice-Chancellor and the said appointment was challenged in W.P.(C) Nos.805, 807, 825 and 791 of 2021. By the common order dated 27.1.2023, while setting aside the appointment of Dr.Bhabeswar Tongbram as Vice Chancellor, directed the official respondents therein to comply fresh process within 28.4.2023 and till such fresh appointment is made, they are directed to make a stop-gap arrangement in accordance with law. As stated supra, pursuant to the order dated 27.1.2023, the Chancellor of the Manipur Technical University has appointed the fourth respondent herein as Vice-Chancellor as

stop-gap arrangement till a regular Vice Chancellor is appointed.

17. The appellant is now questioning the eligibility of the fourth respondent in holding the post of Vice Chancellor even as stop-gap arrangement. Such a factual aspects cannot be gone into by this Court without hearing the fourth respondent. The fact remains that the learned Single Judge in W.P.(C) No.602 of 2021 observed that till the regular Vice Chancellor is appointed, the appellant may continue. Thus, the appellant continued as Vice-Chancellor till the appointment of Dr.Bhabeswar Tongbram. In the aforesaid factual scenario only, the learned Single Judge questioned the maintainability of the writ petition.

18. As stated supra, it is the bounden duty of the appellant to convince the Writ Court qua maintainability of the writ petition filed by him. Therefore, the adjudication recorded by the learned Single Judge regarding the maintainability of the writ petition recorded in the order dated 1.2.2023 is perfectly correct and we find no error in it. Whatever the contentions on the side of the appellant, including the maintainability of the writ petition, he is at liberty to argue before the learned Single Judge in the writ petition and not before this Bench.

19. The ground raised by the appellant that the learned Single Judge while passing the impugned order dated 1.2.2023 has failed to take note of the order of the Co-ordinate Bench of this Court and, therefore, the order impugned is liable to be quashed, cannot be countenanced and the reliance made by learned counsel for the appellant in the case of ***Dashrath Rupsingh Rathod v. State of Maharashtra and another, (2014) 9 SCC 129*** is not applicable to the case on hand in the given facts and circumstances.

20. For the foregoing discussions, we are of the view that there is no ground to interfere with the order of the learned Single. The writ appeal fails and the same is dismissed. There will be no order as to costs.

It is made clear that we have not gone in the merits of the challenge made in W.P.(C) No.83 of 2023 filed by the appellant and it is for the appellant to satisfy the learned Single Judge qua the maintainability of the writ petition and also the challenge made therein.

JUDGE

ACTING CHIEF JUSTICE

FR/NFR

Sushil